out regard to its origin as capital or income. This view is justified on the ground that the earnings of a corporation are income only when a dividend has been declared; and are assets which are incapable of being converted into income, after the process of dissolution has begun, since no dividend proper may be then declared. *Gifford* v. *Thompson*, 115 Mass. 478; *Brownell* v. *Anthony*, 189 Mass. 442, 75 N. E. 746; *Bulkeley* v. *Worthington, Ecclesiastical Society*, 78 Conn. 526, 63 Atl. 351, 12 L. R. A. (N. S.) 785. It is further urged that a search to discover the source of such assets would be speculative and impracticable. *Bulkeley* v. *Worthington Ecclesiastical Society, supra.* But a distribution of surplus on the sale of the entire stock of a going corporation, is not analogous to a distribution on dissolution and will be treated as an extraordinary dividend. *Hemenway* v. *Hemenway*, 181 Mass. 406, 63 N. E. 919. To regard the distribution of funds on dissolution as a part of the corpus of the estate provides a simple course of proceedings for trustees; but apportionment, as in the case of an extraordinary dividend, would seem more equitable.

WILLS—CUSTODY—POWER OF A COURT VOLUNTARILY TO ASSUME JURISDICTION.—A statute provided that any court on being informed that a person has custody of a will may compel him to produce it. A circuit court, *sua sponte*, entered an order requiring the delivery of a will, which had never been offered for probate, to the clerk of the court for safekeeping. *Held*, the order is void. *In re Nicholas' Will* (Va.), 83 S. E. 368.

The person named as executor in a will which is in the possession of another party and has never been properly offered for probate, is entitled to its custody for probate. *Bridge* v. *Dillard*, 104 Md. 411, 65 Atl. 10. It has been held that where a will has been deposited with a safe deposit company, a surrogate has no power, in the absence of a statute, to issue an order directing the company to surrender the will. *In re Foos* (N. Y.), 2 Dem. Sur. 600. A judge of probate may, however, at the instance of any person interested in the will cause it to be exhibited for probate. *Stebbins* v. *Lathrop*, 21 Mass. 33.

The rule that the courts in civil cases must wait for a case to be brought before them before they may assume jurisdiction seems to have had its origin in the separation of governmental powers into legislative, executive, and judicial. *Ex parte Davis*, 41 Me. 38. It was early felt that the exercise of executive power by the judiciary would be intolerable. BLACKSTONE, COM., 269. If a case is improperly presented to a court, it is that court's duty to refuse to accept jurisdiction. *Ex parte Davis, supra. Cohen* v. *Trowbridge*, 6 Kan. 385. In England, the courts but mirrored the will of the king. BLACKSTONE, COM., 270. In this country it would seem that since the people are the source of all authority, the courts have only such power as the people have given them, through the Constitution and statutes of the State. *Morin* v. *Claflin*, 100 Me. 271, 61 Atl. 782. So fundamental is this limitation upon the power of the courts, that many cases assume it with little discussion. *Succession of Townsend*, 37 La. Ann. 114; *Johnson* v. *Miller*, 50 Ill. App. 60; *Dowd* v. *Morgan*, 23 Miss. 587.